

LUCIAN B. VANDEGRIFT, ET AL.

IBLA 91-429

Decided January 8, 1997

Appeal from a decision of the California State Office, Bureau of Land Management, that declared a mining claim and a mill site null and void ab initio. CAMC 239852, CAMC 239853.

Affirmed.

1. Mining Claims: Lands Subject To--Mining Claims: Placer Claims--Mining Claims:
Mill sites

A placer mining claim and a mill site located on land closed to mineral entry were properly declared null and void ab initio.

APPEARANCES: Lucian B. Vandegrift, Esq., Magalia, California, for himself and for Clarinda J. V. Strawn, Kenneth Strawn, Scott M. Vandegrift, and the Meadowbrook Ranch and Trout Farm, appellants.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Lucian B. Vandegrift, Clarinda J. V. Strawn, Kenneth Strawn, Scott M. Vandegrift, and the Meadowbrook Ranch and Trout Farm have appealed from a July 10, 1991, decision of the California State Office, Bureau of Land Management (BLM), declaring the Meadowbrook mill site claim and the Meadowbrook placer mining claim (CAMC 239852 and CAMC 239853) null and void ab initio. The BLM decision concluded the claims were invalid because the lands located by appellants "were segregated from location and entry under the mining laws by a Forest Service Exchange Application, CA 24069, on January 26, 1989."

Notices of location for the subject claims were filed with BLM on November 16, 1990. These notices state that the claims, situated in the S½ NE¼ of sec. 2, T. 23 N., R. 3 E., Mount Diablo Meridian, Butte County, California, were located on November 11, 1990. The Meadowbrook placer location notice states that it is a "relocation and amendment" of a 1959 claim. The Meadowbrook mill site claim notice states it "originally was located in 1865" in conjunction with water diversions and later recorded with Butte County in 1871.

In their statement of reasons, appellants argue that BLM has misstated essential facts and that BLM's decision is therefore incorrect. Appellants contend the Meadowbrook mill site claim has been used continuously for over 125 years to direct water diversions to the Meadowbrook Ranch pursuant to a location made in 1865. They assert that the Meadowbrook placer claim was initially located and filed in 1959. Appellants aver they later filed on these claims in 1990 pursuant to advice from the U.S. Forest Service (Forest Service). They state that before filing again, they checked with the Forest Service regarding the proposed forest exchange and were informed that it had been abandoned, making the subject lands available for location. Appellants also contend that they merged the Meadowbrook placer claim with the Challenge #1 Placer Mining Claim, CAMC 157459, located on August 31, 1984, when the subject lands were not withdrawn. Appellants have requested that the "full case history file be sent to the Board," a request with which BLM complied by furnishing the case file presently before us on appeal. Appellants argue that the case file establishes their rights in the subject mining claims. Our review of the record, however, does not find this position to be well taken, and we affirm BLM.

A mining claim located on land closed to location and entry under the mining laws is null and void ab initio. See Merrill G. Memmott, 100 IBLA 44 (1987). The principal question presented by this appeal is whether the lands located by appellants were open to mineral entry. The BLM decision here under review explains that, under 43 CFR 2202.1(b), the filing of a forest exchange offer, with a notation to the public land records, segregates such forest lands from location or entry under the general mining laws. This is a correct statement of the law. See, e.g., John and Maureen Watson, 113 IBLA 235 (1990).

The case file for exchange application CACA 24069 shows the subject lands were covered by a forest land exchange application filed with BLM on January 26, 1987, serialized as CACA 19890. This application was noted to BLM's master title plat for the subject land in sec. 2 on March 30, 1987. Because the proposed exchange action was not complete at the end of 2 years, the Forest Service renewed the request for exchange on January 26, 1989. BLM identified this action as exchange application CACA 24069 on the public records. In this fashion, a segregation of the subject lands in connection with the forest exchange request was effected beginning in March 1987, and continued through the date appellants attempted to locate the subject mining claims in 1990. Taken at face value, therefore, the record indicates the claims at issue were located in 1990 on land closed to mineral entry and were null and void ab initio, as BLM found. Appellants seek to avoid the effect of this finding by arguing that their 1990 locations relate back to times when the land was open to mineral entry.

The subject claims are null and void if their validity depends on a 1990 location because, as BLM found, the pending forest exchange application segregated the land from mineral entry in 1990. Also, during the same time, there was a licensed power project covering the land that operated to segregate the land in question from mineral entry. While

appellants describe their locations as amendments of existing claims in existence prior to any withdrawal or segregation of the subject lands from mineral entry, we are unable to accept this assertion. An amended location is a location made in furtherance of an earlier valid location and relates back to the date of the original location so long as no adverse rights have intervened. See Grace P. Crocker, 73 IBLA 78, 80 (1983), and cases cited therein. To establish that these claims are amendments of prior locations, appellants must establish that the subject claims are actually amendments of valid, prior locations made while the lands at issue were open to mineral location. See Russell Hoffman (On Reconsideration), 87 IBLA 146, 148 (1985).

In 1991, before the BLM decision here under review issued, the Forest Service notified BLM that the subject claims were in Power Project No. 803. See July 1, 1991, Letter to Rose Fairbanks, Records and Adjudication, California State Office, BLM, from John Palmer, Acting Forest Supervisor, Plumas National Forest. Attached to this letter was a copy of a BLM decision dated October 23, 1959, rejecting as null and void a notice of location for the Meadowbrook placer mining claim, filed with BLM by the Vandegrift Mining Association on August 5, 1959. Finding that the claim had been located pursuant to "Public Law 359," BLM rejected the location notice because the lands embraced therein were situated within actively licensed Power Project 803 and, therefore, were unavailable to mineral entry pursuant to "Section 24 of the Federal Power Act."

Beginning with the enactment of section 24 of the Federal Power Act of 1920, as amended, 16 U.S.C. § 818 (1994), public lands included in a proposed power project are reserved from entry, location, and disposal when a project application is filed. Unless such lands are restored to mineral entry in accordance with this statute, a mining claim located thereon is null and void ab initio. See, e.g., John Wright, 112 IBLA 233, 238 (1989). Passage of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. § 621 (1994), P.L. 84-359, provided an opportunity to locate mining claims on lands made unavailable under section 24, but only in accordance with the restrictions of the later Act. Land in a licensed project is excluded from the provisions of the Restoration Act. 30 U.S.C. § 621(a) (1994); John Wright, 112 IBLA at 238.

Pursuant to an application for licensing Power Project No. 803 by Pacific Gas and Electric Company on May 3, 1927, the S $\frac{1}{2}$ NE $\frac{1}{4}$, sec. 2, T. 24 S., R. 3 E., Mount Diablo Meridian, was withdrawn from mineral entry. See 40 FR 43079 (Sept. 18, 1975). By order issued September 10, 1975, this withdrawal was modified to encompass only those lands of the S $\frac{1}{2}$ NE $\frac{1}{4}$ of sec. 2 lying within the boundary of the project as shown on "map Exhibit K FPC Nos. 803-2, -13, and -14." Id.; see also 41 FR 8193, 8194 (Feb. 25, 1976). Those maps are not included in the record before us, but BLM's master title plat indicates the lands shown on the Exhibit maps do not include the Meadowbrook mill site claim. The land outside the project boundary was opened to entry on May 5, 1976. 41 FR 13958 (Apr. 1,

1976). On March 4, 1985, a new power project application (designated Power Project No. 7728), covering the S½ NE¼, was filed by Robley Point Hydro Partners. A license for the project issued on March 19, 1987, and remained in effect until June 26, 1991.

Appellants assert that the Meadowbrook mill site claim was located in 1865. While such a claim would precede the power site withdrawals (and the 1872 Mining Law itself), appellants are nonetheless required to establish the fact of this prior location. The case record contains no evidence that such a claim was recorded with BLM after recordation became mandatory under 43 U.S.C. § 1744 (1994). Under that provision of law, the owner of an unpatented mining claim, mill site, or tunnel site located on or before October 21, 1976, was required to file a copy of the official record of the notice of location of the claim and a copy of the evidence of annual assessment work with the proper BLM office on or before October 22, 1979. Failure to make these filings in a timely manner constitutes a conclusive presumption of abandonment of the claim by the owner. United States v. Locke, 471 U.S. 84, 97 (1985). For the Meadowbrook mill site claim to be considered valid, appellants must show that they have properly recorded necessary documents with the Department. Since the records before us do not include any such documentation, we cannot accept appellants' assertion that the Meadowbrook mill site claim is a valid, existing claim.

[1] Nor have appellants provided documentation showing the Meadowbrook placer claim location relates back to a claim located while the lands were open to mineral entry. Appellants refer to an attempted 1959 location of the Meadowbrook placer claim. The record, however, shows that BLM previously found this location to be null and void because the subject land was segregated from entry by an existing power project license. See Oct. 23, 1989, Decision. Nothing presented to us suggests that BLM's 1989 decision was not final for the Department. In accordance with the doctrine of administrative finality (see Helit v. Gold Fields Mining Corp., 113 IBLA 299, 308 (1990)), no rights remained in that location after the 1989 BLM decision became final. If appellants are to prove they have valid, existing rights in the Meadowbrook placer claim which precede the forest application withdrawal, they must prove those rights with documents relating to a location other than the one attempted in 1959. The record before us does not include such documentation.

Finally, we reach appellants' assertion that the Meadowbrook placer claim relates back to the Challenge #1 claim, CAMC 157459, located in 1984 by Joseph Owen. In order to prove that a claim is an amendment and relates back to a prior location, the proponent of the amendment must shown that an unbroken chain of title links the claims. See Russell Hoffman (On Reconsideration, supra. The Meadowbrook placer claim location notice was prepared and signed by appellants on November 11, 1990; they, however, did not own the Challenge #1 claim on that date, according to their assessment work notice filed on August 21, 1991. The notice states that the Challenge

#1 claim was not deeded to appellants until January 9, 1991. These facts do not show there is an "unbroken chain of title" tying the two claims together. On the record before us, therefore, this claim also was properly found to be null and void.

We therefore find that appellants have not established that the location notices filed by them in 1990, which are the subject of this appeal, relate back to any prior, valid claims. We therefore are unable to conclude that appellants have demonstrated BLM's decision to be in error, inasmuch as the record demonstrates that the land sought to be claimed by appellants in 1990 was closed to mineral entry when their attempted locations were made.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Amess
Administrative Judge

I concur.

John H. Kelly
Administrative Judge

